

Joe M. Lozano, Jr. / TBN 24005462  
Cristina Platon Camarata / TBN 16061560  
Michael J. Burns / TBN 24054447  
Cynthia Brown / TBN 24026968  
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Attorney for America's Servicing

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

|   |   |  |
|---|---|--|
| <b>IN RE:</b>                           | § |  |
|   | § | <b>CASE NO. 309-37300-SGJ-7</b>        |
| <b>RAYMOND CLIVE GASTON JR.</b>         | § |  |
| <b>TAMMERA JO GASTON</b>                | § | <b>CHAPTER 7</b>                       |
| <b>DEBTORS</b>                          | § |  |
|   | § |  |
| <b>AMERICA'S SERVICING COMPANY</b>      | § |  |
| <b>MOVANT</b>                           | § | <b>HEARING DATE: FEBRUARY 25, 2010</b> |
| <b>VS</b>                               | § |  |
| <b>RAYMOND CLIVE GASTON JR.</b>         | § | <b>HEARING TIME: 01:30 PM</b>          |
| <b>TAMMERA JO GASTON</b>                | § |  |
| <b>AND ROBERT MILBANK, JR., TRUSTEE</b> | § |  |
| <b>RESPONDENTS</b>                      | § |  |

**MOTION FOR RELIEF FROM AUTOMATIC STAY OF ACT AGAINST PROPERTY**

**TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:**

Comes now Movant America's Servicing Company, as servicing agent for US Bank National Association, as Trustee for Credit Suisse First Boston HEAT 2005-4 (hereinafter collectively referred to as "Movant"), its successors and/or assigns, a secured creditor in the above-entitled and numbered case, by and through its attorneys, to file this its Motion for Relief from Automatic Stay of Act against Property ("Motion") against:

Raymond Clive Gaston Jr.

Tammera Jo Gaston

Debtors, and Robert Milbank, Jr., duly appointed Chapter 7 Trustee, hereinafter referred to respectively as "Debtors" and "Trustee", and in support thereof, Movant would respectfully represent to the Court as follows:

1. On October 30, 2009, Debtors filed a voluntary petition under Chapter 7 of the Bankruptcy Code. Subsequently, Robert Milbank, Jr. was appointed Trustee in this Chapter 7 case, qualified and is duly acting in such capacity.

2. This Court has jurisdiction of this Motion by virtue of 11 USC §§105, 361 and 362, and 28 USC §§1334 and 157.

3. Movant is the owner of the following Note secured by Deed of Trust of even date therewith covering the real property located at 169 Magnolia Ln, Rockwall, Texas 75032. True and correct copies of the Note and Deed of Trust are attached hereto as Exhibits "A" and "B."

- a. Note Number xxxxxx7997, in the original principal amount of \$111,360.00, dated May 13, 2005. Executed by Original Mortgagor:

Tammera Gaston

to Sebring Capital Partners, Limited Partnership. Said note was subsequently transferred to Movant.

- b. Debtors are in default on their obligations to Movant in that Debtors have failed to make their payments when due and owing pursuant to the terms of the above-described Note and/or Deed of Trust.

- c. As of January 22, 2010, the total indebtedness was \$122,650.80. Debtors are in default on 7 contractual payments (July 2009 at \$1,308.53, August 2009 at \$1,308.53, September 2009 at \$1,308.53, October 2009 at \$1,308.53, November 2009 at \$1,308.53, December 2009 at \$1,308.53, January 2010 at \$1,308.53). The amount of current monthly mortgage installment payment is \$1,308.53.

4. By failing to make the regular monthly installment payments due pursuant to the Note and/or Deed of Trust, Debtors have not provided adequate protection to Movant. Consequently, Movant lacks adequate protection of its interest in the property which serves as collateral.

5. Movant has no remedy available to it other than to seek relief from the automatic stay.

6. Movant has had to retain counsel to represent it before this Court and is incurring legal expenses and attorneys' fees for which it is entitled to reimbursement under the terms of its Note.

7. For the above and foregoing reasons, Movant asserts cause exists sufficient to waive the requirement of Bankruptcy Rule 4001(a)(3), therefore allowing Order to be effective upon this Honorable Court's signature.

WHEREFORE, PREMISES CONSIDERED, Movant prays that, upon hearing of this Motion, said automatic stay be terminated as to the claim of Movant, its successors and/or assigns, to seek its statutory and other available remedies; that Movant, its successors and/or assigns, be permitted to obtain possession of the property which serves as collateral to the exclusion of Debtors, alternatively, Movant, its successors and/or assigns, be afforded adequate protection by including, but not limited to, having all payments presently due in this proceeding to Movant being brought current and Movant being reimbursed for its reasonable attorneys' fees and expenses; and that Movant be granted such other and further relief, at law and in equity, as is just.

Respectfully submitted,  
Brice, Vander Linden & Wernick, P.C.

/s/ Michael J. Burns /s/ Cristina Platon Camarata

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Attorney for America's Servicing Company

7696-N-0955

### NOTICE

PURSUANT TO THE PROVISIONS OF LOCAL BANKRUPTCY RULE 4001.1(b), YOU MUST FILE AN ANSWER TO THIS MOTION WITHIN FOURTEEN (14) DAYS OF THE DATE INDICATED IN THE CERTIFICATE OF SERVICE OF THIS MOTION. YOUR ANSWER SHALL INCLUDE A DETAILED AND COMPREHENSIVE STATEMENT AS TO HOW MOVANT CAN BE "ADEQUATELY PROTECTED" IF THE AUTOMATIC STAY IS TO BE CONTINUED. IF YOU DO NOT FILE AN ANSWER AS REQUIRED, THE ALLEGATIONS IN THIS MOTION SHALL BE DEEMED ADMITTED, AND AN ORDER GRANTING THE RELIEF SOUGHT BY THIS MOTION MAY BE ENTERED BY DEFAULT. THREE ADDITIONAL DAYS ARE ALLOWED PURSUANT TO FED. R. BANKR. P. 9006(f) IF SERVICE IS BY MAIL.

PURSUANT TO LOCAL BANKRUPTCY RULE 4001.1(e), PLEASE TAKE NOTICE THAT, ABSENT COMPELLING CIRCUMSTANCES, EVIDENCE PRESENTED AT PRELIMINARY HEARINGS ON MOTIONS FOR RELIEF FROM THE AUTOMATIC STAY IN THE DALLAS DIVISION WILL BE BY AFFIDAVIT ONLY AND THAT YOU MUST SERVE EVIDENTIARY AFFIDAVITS AT LEAST 48 HOURS IN ADVANCE OF SUCH HEARING UPON THE ABOVE-NAMED ATTORNEY AT THE ADDRESS SPECIFIED ABOVE. FAILURE OF AN ATTORNEY TO ATTEND A SCHEDULED AND NOTICED PRELIMINARY HEARING MAY BE GROUNDS FOR DEFAULT RELIEF REGARDLESS OF THE PRESENCE OR ABSENCE OF AFFIDAVITS.

### CERTIFICATE OF CONFERENCE

I hereby certify that on the 28th day of January 2010, Michael J. Burns contacted Debtors' attorney's office.

/s/ Michael J. Burns /s/ Cristina Platon Camarata

Joe M. Lozano, Jr.

Cristina Platon Camarata

Michael J. Burns

Cynthia Brown

Adam R. Moore

### CERTIFICATE OF SERVICE

I, Michael J. Burns, hereby certify that a true and correct copy of the foregoing Motion for Relief from Stay of Act Against Property has been served upon the following parties in interest either via pre-paid regular U.S. Mail or via electronic notification on or before the 29 day of January 2010:

Debtors' Attorney  
Richard James Reister  
Law Offices of Rich Reister, PLLC  
14001 Dallas Parkway  
Suite 1200  
Dallas, TX 75240

Debtors  
Raymond Clive Gaston Jr.  
Tammera Jo Gaston  
169 Magnolia Lane  
Rockwall, Texas 75032

US Trustee  
William Neary  
1100 Commerce Street, Room 976  
Dallas, Texas 75242

Chapter 7 Trustee  
Robert Milbank, Jr.  
500 North Akard, Suite 2980  
Dallas, Texas 75201

Bassel & Wilcox, PLLC  
Ginger Colville  
RE: Chrysler Financial  
P.O. Box 11509  
Fort Worth, Texas 76110-0509

Recovery Management Systems Corp  
Ramesh Singh  
RE: Capital Recovery III LLC  
25 SE 2nd Avenue, Suite 1120  
Miami, Florida 33131-1605

Bassel & Wilcox, PLLC  
Pamela Arnold Bassel  
RE: Chrysler Financial  
P.O. Box 11509  
Fort Worth, Texas 76110-0509

7696-N-0955  
309-37300-SGJ-7

/s/ Michael J. Burns /s/ Cristina Platon Camarata

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